

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8472 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.
  2. To be referred to the Reporter or not?-Yes.
  3. Whether Their Lordships wish to see the fair copy of the judgement?-Yes.
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
  5. Whether it is to be circulated to the Civil Judge?-No.

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KRISHNAJIVAN NATHALAL SHAH

Versus

REGIONAL MANAGER

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Appearance:

MR KANUBHAI I PATEL for Petitioner  
MR ARUN H MEHTA for Respondent No. 1  
Mr.S.J. Dave, Assistant GOVERNMENT PLEADER,  
for Respondent No. 2

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CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE M.S.SHAH

Date of decision: 03/11/98

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

The petitioner was the Chief Cashier of the respondent-Bank at its Branch Office at Gandhi Ashram. On 9.1.1988, Auditors of the Branch came for inspection to verify the records and the cash. It was found that there was shortage of cash of nearly Rs.85,000/-. The respondent-Bank initiated departmental proceedings against the petitioner, alleging that the petitioner had committed misappropriation. An enquiry was conducted and

the Enquiry Authority held that there was shortage of cash, but as it was not misappropriation or embezzlement, the petitioner did not deserve any punishment. The petitioner contended before the Enquiry Officer that on the relevant date, he was not feeling well and he informed this fact to the Branch Manager and as he was the only Cashier, he was directed to perform his duty and between 11.00 a.m. and 2.00 p.m., the petitioner had to complete the cash transaction and, according to the petitioner, one person came to the Bank and he requested for exchange of Notes to be used for payment of salary to workmen and while exchanging these Notes, the petitioner might have given Rs.85,000/- in excess and he is not sure of various denominations and it happened because the petitioner was in a sick condition. When the Auditors came, the petitioner himself said the same and found serious mistake in the cash and then only, it struck to him that the person, who came for exchange of Notes, had taken the excess money and the petitioner lost his equilibrium of mind and rushed in search of that person and as he was previously known to the petitioner as a person of Himatnagar side, the petitioner went there, but he was unable to find the whereabouts of that person and at Himatnagar, the petitioner's physical condition worsened and due to hypertension and angina, he had to be admitted in a hospital. The petitioner also contended that within two days, the petitioner's wife made good the entire loss sustained to the Bank.

The Enquiry Officer opined that as there was only shortage in cash, the petitioner may be reinstated in service and the disciplinary proceedings be dropped. The Disciplinary Authority did not agree with this suggestion and the petitioner was ordered to be dismissed from service. The petitioner filed an appeal before the Appellate Authority and by an order dated 4th January, 1990, the Appellate Authority confirmed the punishment of dismissal from bank's service awarded by the Disciplinary Authority. The order of dismissal of the petitioner from the bank's service is challenged before us.

In the Special Civil Application, it is contended by the petitioner's counsel that the respondents have violated the provisions of Article 31(2) of the Constitution and that the respondents had not afforded any opportunity of being heard to the petitioner on the point of punishment. It is also contended for the petitioner that though requested, the findings of the Enquiry Officer were not supplied to him. The petitioner has also alleged that the findings of the Enquiry Officer and the conclusion of the Disciplinary Authority are

perverse and he has also alleged that Regulation 8.8 of the Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 was violated by the respondents. It is also alleged that Regulation 8.5 of the aforesaid Regulations of 1976 is clearly ultra vires Article 311(2) of the Constitution.

The respondent-Bank, by a detailed affidavit-in-reply, has denied all allegations made by the petitioner's counsel. In the affidavit-in-reply, it is stated that the Regulations, which govern the Officers, have been applied in this case and it is denied that the petitioner was not keeping good health on 9.1.1988 and that he requested for leave on the ground that he was unwell. The petitioner left the Bank at 1.00 p.m. and the Auditors started checking the cash. The petitioner did not file any statement before the Enquiry Officer nor did he adduce any evidence. The petitioner has not stated the name of the person, who, according to him, got over-payment from the Bank. Even though the petitioner alleges that he went in search of that person to Himatnagar, he did not divulge the name or address of that person. As soon as the Auditors wanted to check the cash, the petitioner realised the serious mistake and he left the Bank. It is true that the petitioner's wife paid the amount on 11.1.1988, but the petitioner did not explain how this money came into the possession of his wife. The report of the Enquiry Officer was given to the petitioner with the final order and this procedure has been followed as per the Regulations framed by the Bank. There was no violation of Article 14 or Article 16 of the Constitution of India.

The charge against the petitioner was that the petitioner was holding the charge of cash safe keys on 9.1.1988 and on physical counting of cash, there was total shortage of Rs.82,707.56 and an amount of Rs.3,000/- was deposited by one M.K. Chauhan on 9.1.1988 and this amount was received by the petitioner and he had initialled and stamped the counterfoil No.36596 as proof of having received the cash, but the same was not accounted by him in the cash receipt or in the records of the bank and this amount was not credited to the party's account and the allegation in the charge was that the petitioner had received the cash, but did not account for it and has misappropriated the amount so received on behalf of the Bank. The Enquiry Officer held that there was shortage of cash, but the same cannot be taken as misappropriation or embezzlement. The Enquiry Authority had also taken note of the fact that the shortage of cash had been made good in full and, therefore, the petitioner

was to be reinstated in service. The Disciplinary Authority disagreed with this and passed an order, dismissing the petitioner from service. Even though the Enquiry Authority suggested that the disciplinary proceedings against the petitioner be dropped, the finding was to the effect that there was shortage of cash. The petitioner could not give any satisfactory explanation as to why he could not account for Rs.3,000/- received by him. He also could not explain how there was shortage of cash to the extent of Rs.82,000/-. The petitioner did not submit any written statement before the Enquiry Officer. He did not produce any defence witnesses nor did he get himself examined in the enquiry proceedings. He submitted argument notes before the Enquiry Officer. As there was shortage of cash, prima facie, that indicates that the petitioner dealt with the money and in the absence of any satisfactory explanation for the shortage, the same amounts to misappropriation. Having regard to the facts and circumstances, we do not find any reason to disagree with the order passed by the Disciplinary Authority, which has been confirmed by the Appellate Authority.

The next question that may arise for consideration is whether the petitioner was entitled to get copy of the enquiry report. In the instant case, the Enquiry Officer and the Disciplinary Authority were different, and admittedly, the petitioner was not supplied with a copy of the Enquiry Report. This, according to the petitioner, was violative of Articles 14 and 21 of the Constitution as there was violation of the principles of natural justice. It was held in *Union of India and others v. Mohd. Ramzan Khan*, AIR 1991 SC 471 that if the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusion and in case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, and if the material against him is not made available by the punishing authority, there is violation of the principles of natural justice and it was held that the delinquent officer was entitled to get a copy of the Enquiry Report if the enquiry was conducted by an Officer other than the Disciplinary Authority. The said view was held in *Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others*, (1993) 4 SCC 727. However, it was explained in paragraph 43 at page 763 that the view held in *Mohd. Ramzan Khan's case*, AIR 1991 SC 471 (*supra*) has to be given prospective effect. The decision in *Mohd.*

Ramzan Khan was made on November 20, 1990. Therefore, it was held in *Managing Director, ECIL, Hyderabad and others*, (1993) 4 SCC 727 (*supra*) that the law was in an unsettled condition till at least November 20, 1990, on which date Mohd. Ramzan Khan's case was decided. Since the said decision made the law expressly prospective in operation, the law laid down there will apply to those orders of punishment, which are passed by the Disciplinary Authority after November 20, 1990. In the instant case, the Disciplinary Authority passed the order of dismissal from service on 6.10.1989 and the same was confirmed by the Appellate Authority by an order dated 4th January, 1990. Therefore, the dicta laid down in Mohd. Ramzan Khan's case (*supra*) cannot be applied to the instant case.

The petitioner has challenged the vires of Regulation 8.5(a) and (b) of the Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976. According to the petitioner, these Rules are against the mandate of Article 311 of the Constitution. It is urged that the delinquent employee is entitled to get a copy of the enquiry report and that he shall be given an opportunity to present his case before the Disciplinary Authority before any punishment is imposed on him and the provisions contained in Regulations 8.5(a) and (b) are against the principles of natural justice. It was held in Mohd. Ramzan Khan's case (*supra*) as well as in *Managing Director, ECIL, Hyderabad* (*supra*) that the denial of the report of the Enquiry Officer or denial of reasonable opportunity is violative of the principles of natural justice and it was specifically held in *Managing Director, ECIL, Hyderabad* (*supra*) that the Rules, if any, which deny the report to the employee, are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if statutory rules do not permit the furnishing of the report or are silent on the subject (see paragraph 30 of the said judgment at page 756). Therefore, we hold that Regulations 8.5(a) and (b), to the extent they deny copy of the Enquiry Officer's report and denying reasonable opportunity of being heard by the disciplinary authority, are against the principles of natural justice and to that extent, they are void. However, in the instant case, it does not affect the ultimate result of the case for the reasons given by us earlier that the dicta laid down in Mohd. Ramzan Khan's case would only apply prospectively as the petitioner herein was imposed with a punishment prior to November 20, 1990, the day on which Mohd. Ramzan Khan's case (*supra*) was decided. There is no merit in the Special

Civil Application and the same is dismissed. Rule is  
discharged. No costs.

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(apj)